

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

<b>JUDY J. TICE</b>	)	
Claimant	)	
VS.	)	
	)	
<b>WECKWORTH-LANGDON MANUFACTURING, INC.</b>	)	Docket No. 230,585
Respondent	)	
AND	)	
	)	
<b>COLONIAL CASUALTY INSURANCE COMPANY</b>	)	
Insurance Carrier	)	

**ORDER**

Respondent appeals from an Award entered by Administrative Law Judge Nelsonna Potts Barnes on February 25, 2000. The Appeals Board heard oral argument July 14, 2000.

**Appearances**

Dale V. Slape of Wichita, Kansas, appeared on behalf of claimant. Jeffery R. Brewer of Wichita, Kansas, appeared on behalf of respondent and its insurance carrier.

**Record & Stipulations**

The Appeals Board has considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The ALJ found claimant has a 67 percent work disability based on a 34 percent task loss and a 100 percent wage loss. On appeal, respondent contends both the task loss and wage loss should be lower than the ALJ found them to be. The ALJ relied on the task loss opinions of Dr. Jane K. Drazek and Dr. Philip R. Mills. According to respondent, the ALJ should have relied on, or at least given equal weight to, the opinion of Dr. John P. Estivo. Dr. Estivo was a treating physician and in his opinion the task loss was 5 percent.

Respondent also argues that claimant has not made a good faith effort to obtain employment and a wage should be imputed.

Claimant asks that the award be affirmed.

The nature and extent of claimant's disability is the only issue on appeal.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record and considering the arguments, the Appeals Board concludes the Award should be affirmed.

Claimant's job duties involved heavy sewing. From the work, claimant developed bilateral upper extremity and neck problems variously diagnosed as chronic cervical strain, cervical hypomobility, cervical stenosis, ulnar nerve entrapment, and carpal tunnel syndrome. Respondent concedes that claimant could not, as a result of recommended restrictions, perform the work she did for respondent.

Administrative Law Judge Nelsonna Potts Barnes found claimant has a 34 percent task loss as a result of her injuries based on opinions from Dr. Mills and Dr. Drazek. The ALJ chose not to give weight to the task loss opinion of Dr. Estivo and the Board agrees. Dr. Estivo did not restrict against repetitive use activities while both Dr. Drazek and Dr. Mills did. In our view, the repetitive use restrictions would be appropriate as those were the activities that precipitated claimant's problems. The opinions by Dr. Mills and Dr. Drazek are close, 33 percent and 35 percent respectively, and based on those opinions, the Board agrees with the finding that the task loss is 34 percent.

As to wage loss, respondent first points out that claimant did, for a brief period, work at a wage of \$7.00 per hour. According to respondent, the \$7.00 per hour wage should be imputed as a permanent post injury wage. But, the uncontroverted evidence shows claimant worked only four days and, due to her injuries, was not able to continue.

Respondent also argues claimant failed to cooperate in the job placement program with Mr. James Molski. Mr. Molski's testimony does not support this conclusion. Claimant did advise prospective employers of her restrictions and did wear braces to some interviews, but nothing suggests any element of bad faith on her part and Mr. Molski does not maintain that claimant failed to cooperate with the program. Claimant first made a good faith effort to find work on her own and then cooperated with the placement program through Mr. Molski. The Board finds claimant is entitled to a 100 percent wage loss. *Copeland v. Johnson Group, Inc.*, 24 Kan. App. 2d 306, 944 P.2d 179 (1997).

Claimant is entitled to benefits for a 67 percent work disability based on a 34 percent task loss and a 100 percent wage loss. K.S.A. 44-510e.

The Board adopts all findings and conclusions by the ALJ not inconsistent with the above specific findings by the Board.

**AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Nelsonna Potts Barnes on February 25, 2000, should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of July 2000.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Dale V. Slape, Wichita, KS  
Jeffery R. Brewer, Wichita, KS  
Nelsonna Potts Barnes, Administrative Law Judge  
Philip S. Harness, Director